

Claimant admits that he did not report the incident to respondent on the day that it occurred. According to claimant, he reported the accident to respondent on either October

4 or 5, 2002. But according to respondent's owner, Clifford Dale, claimant did not report hurting his back on the job until October 22, 2002. And the Judge in the preliminary hearing Order commented that Mr. Dale was exceptionally credible.

The Board concludes that the present record fails to prove that claimant was justified in failing to report the back injury to respondent within 10 days of the accident. Claimant states that he did not initially notify respondent of the accident as he was hoping that his symptoms would resolve. But according to Mr. Dale, claimant still did not report the back injury when claimant began seeking medical treatment on October 7, 2002, or even later on October 17, 2002, when claimant's chiropractor restricted him from working.

At present, the record fails to prove that claimant provided respondent with notice of the accident or back injury within 10 days of the accident, or that claimant was justified in failing to provide notice within that time frame. Consequently, the Board must deny claimant's request for benefits.<sup>1</sup>

As provided by the Workers Compensation Act, preliminary hearing findings are not final as they may be modified upon a full hearing of the claim.<sup>2</sup>

**WHEREFORE**, the Board reverses the February 12, 2003 preliminary hearing Order and denies claimant's request for benefits.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of March 2003.

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BOARD MEMBER

c: Donald T. Taylor, Attorney for Claimant  
Matthew S. Weaver, Attorney for Respondent and its Insurance Carrier  
Julie A. N. Sample, Administrative Law Judge  
Director, Division of Workers Compensation

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<sup>1</sup> See K.S.A. 44-520.

<sup>2</sup> K.S.A. 44-534a(a).